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## ***EXECUTIVE ORDER 13132: FEDERALISM***

DEPT. OF TRANSPORTATION  
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**Effective Date:** November 2, 1999

**Purpose:** Ensure that federal Agencies adhere to Constitutional principles in the development of policies, regulations, and draft legislation that have federalism implications

- Policies with 'Federalism implications' are rules, legislation, and other policy statements or actions that have substantial direct effects on States, the relationship between the States and federal government, or on the distribution of power among levels of government

**Focus on Consultation:** EO 13132 underscores need for meaningful, timely consultation with State and local governments if federal activity has Federalism implications, or preempts State law

- Typically, FRA will accomplish consultation through participation of AASHTO and NARUC in RSAC process
- Where FRA action has unique or profound State/local impact, FRA will do extensive outreach to affected governmental units

## **Rulemaking Proceeding-s:**

- If Agency issues rule with federalism implications, or preempts State law, Agency must consult with State officials, prepare a 'Federalism Summary Impact Statement' in preamble of the rule, and certify that EO 13132 requirements are met
- Agency should avoid issuing rules with unfunded mandates, unless Agency funds the costs incurred by the State, or consults with the State and prepares 'Federalism Summary Impact Statement' in preamble of the rule

[Due to 1970 Safety Act, nearly all FRA safety rules preempt State rules of: same subject matter, unless State rule addresses a local safety hazard, is not inconsistent with federal law, and does not burden interstate commerce]

Federalism Summary Impact Statement must include:

- Description of Agency consultations with State
- Summary of State's concerns
- Extent to which concerns are met in the rule

**Legislative Proposals:** Agencies should avoid submitting proposed legislation that would:

- Directly regulate the States in ways that interfere with essential State functions
- Attach conditions to federal grants that are not related to the purpose of the grant
- Otherwise preempt State law, unless the preemption is consistent with federalism principles of the Order